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CLERK U.S. DISTRICT COURT  
ANCHORAGE, ALASKA

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY.**United States District Court**

District

District of Alaska

Name of Movant

Susan C. McKittrick

Prisoner No.

15130-006

Case No.

J05-0004-004-CR-(HRH)

Place of Confinement

Federal Correctional Institution: Dublin 5701 8th Street, Camp Parks, Dublin, CA 94568

UNITED STATES OF AMERICA

V.

SUSAN C. MCKITRICK

(name under which convicted)

**MOTION**

1. Name and location of court which entered the judgment of conviction under attack \_\_\_\_\_

United States District Court for the District of Alaska2. Date of judgment of conviction January 9, 20063. Length of sentence 108 Months4. Nature of offense involved (all counts) 21 U.S.C. §§ 846, and 841(a)(1), (b)(1)(A) DrugConspiracy

5. What was your plea? (Check one)

(a) Not guilty ☐(b) Guilty ☒(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

N/A6. If you pleaded not guilty, what kind of trial did you have? (Check one) N/A(a) Jury ☐(b) Judge only ☐7. Did you testify at the trial? N/AYes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

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9. If you did appeal, answer the following: N/A

(a) Name of court \_\_\_\_\_

(b) Result \_\_\_\_\_

(c) Date of result \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information: N/A

(a) (1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion? N/A

Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information: N/A

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

[illegible]

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Fifth and Sixth Amendment Violations; Due Process; Lack of

Finding by a Jury; and Contract Clause Provision in the United States

Constitution, Article I, Section 10 Uniform Commercial Code.

**Supporting FACTS (state briefly without citing cases or law)** The Sentencing Transcripts

reflects that the Court did not adhere by the plea agreement guideline

calculation base offense level (USSG § 2D1.1(c)(4) 32, adjustment offense

level 29, estimated sentencing range 97-121. The Court furthered that

the PSI changed the durg amount from the plea agreement, noting the

discrepancy in the change of drug amount (actual meth) and the Court

believed it was a mistake on their part that base level change to level 34.

B. Ground two: N/A

**Supporting FACTS (state briefly without citing cases or law):** N/A

C. Ground three: N/A

**Supporting FACTS (state briefly without citing cases or law):** N/A

D. Ground four: N/A

Supporting FACTS (state *briefly* without citing cases or law): N/A

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: Ground One was not previously presented because the Court stated to the defendant that she could not appeal the sentence because of a waiver in the plea agreement. However, the plea agreement states that "The only exceptions to this collateral attack waiver are as follows: (2) a challenge to the voluntariness of her guilty plea." Because there was no agreement regarding the base level of 34 and discrepancy of drug amount, a question of law arises.
14. Do you have any petition or appeal now pending in any court as to the judgment under attack?  
Yes ☐ No ☐
15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing William B. Carey, 8212160 Attorney for Defendant

1502 West 34th Avenue Anchorage, Alaska 99503

(b) At arraignment and plea Same

(c) At trial Same

(d) At sentencing Same

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(e) On appeal \_\_\_\_\_ N/A

(f) In any post-conviction proceeding \_\_\_\_\_ N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_ N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? N/A

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11-15-06  
(date)

See C. Mekitrick  
Signature of Movant

"Memorandum in Support of Points and Authority to follow within 30 days of date of filing"



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CERTIFICATE OF SERVICECLERK U.S. DISTRICT COURT  
ANCHORAGE, ALASKA

I, Susan C. McKittrick, declare under penalty of perjury, pursuant to §1746 that the foregoing is true and correct.

On November 15, 2006, I deposited one copy of the foregoing documents with sufficient first-class postage affixed and addressed to the Court, and also one copy to the Clerk into the outgoing mail depository of the F.C.I. Dublin Institutional Mail-box with instructions to stamp "filed" on the extra copy and return to Petitioner in the self-addressed pre-postage paid envelope enclosed.

Date: 11-15-06

Susan C. McKittrick

Susan C. McKittrick  
Fed. Reg. No. 15130-006  
Federal Correctional Institution: Dublin  
5701 8th Street, Camp Parks  
Dublin, California 94568

U.S. District Court

Honorable H. Russel Holland  
Senior U.S. District Judge  
Attn: Michael D. Hall, Clerk  
District Clerk: Hall, Clerk  
Federal Building & U.S. Courthouse  
P.O. Box 4  
222 West Seventh Avenue  
Anchorage, Alaska 99513-7564